

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1983 of 2000
to
FIRST APPEAL No 1999 of 2000
with
FIRST APPEAL No 7252 of 1999
to
FIRST APPEAL No 7267 of 1999
with
FIRST APPEAL No 401 of 2001
to
FIRST APPEAL No 416 of 2001
with
CIVIL APPLICATION No 5198 of 2000
to
CIVIL APPLICATION No 5213 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT THRO' SPECIAL LAND ACQUISITION OFFICER
Versus

GORDHANBHAI RAMABHAI PATEL POA HOLDER OF KESHAJI B. & 7

Appearance:

MR ARUN D OZA GOVT. PLEADER for Appellant Nos. 1-2
in F.A. 7252/99 to 7267/99

MR RC KODEKAR AGP for Appellant Nos. 1-2
in F.A. 1983/00 to 1999/00
MR SUDHANSHU S. PATEL AGP for Appellant Nos. 1-2
in FA 401 to 416/01
MR AJ PATEL for Respondents

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. These appeals are divided into three groups and are taken up together.

#. These appeals are lodged under Section 54 of the Land Acquisition Act, 1894 (hereinafter to be referred as "the Act") read with Section 96 of the Civil Procedure Code.

#. First Appeal Nos. 1983 of 2000 to 1999 of 2000 are preferred by the State of Gujarat and the Executive Engineer, Narmada Project II, Ahmedabad against the award made by the Reference Court (2nd Extra Assistant Judge, Ahmedabad (Rural)) in L.A.C. Nos. 786 of 1991 to 793 of 1991, 795 of 1991 to 802 of 1991 and 808 of 1991 decided on 25th January, 2000. The Division bench hearing the appeals admitted the same and at the request of the learned Government Pleader and the learned advocate for the claimants, directed to put up the matters for hearing on 23.1.2001.

#. The learned advocate appearing in F.A. Nos. 7252 of 1999 to 7267 of 1999 requested the Division Bench to place the appeals for hearing with these matters and hence accordingly those appeals are also placed for hearing. These appeals were admitted on 31.7.2000 by the Division Bench. These appeals are filed by the Special Land Acquisition Officer and Executive Engineer, against the award made by 3rd Extra Assistant Judge, Ahmedabad (Rural) on 9th April, 1999 in L.R.Case Nos. 16 of 1992 to 25 of 1992, 54 of 1992 to 59 of 1992. Civil Application Nos. 5198 of 2000 to 5213 of 2000 are filed in these appeals for ad-interim relief wherein the Court has issued notice making returnable on 16.8.2000.

#. First Appeal Nos. 401 of 2001 to 416 of 2001 filed

by the State of Gujarat and Executive Engineer were admitted on 17.1.2001. Learned counsel appearing for the State and the claimants requested the Division Bench to put up these matters for final disposal on 23.1.2001.

#. In all these appeals paper book has been supplied as per the order made by Division Bench earlier while admitting the matters.

#. So far as First Appeal Nos. 7252/99 to 7267/99 are concerned, the lands situated at village Jamiyatpura, Taluka and District Gandhinagar were acquired for Narmada Main Canal. The claimants claimed Rs. 100/- per sq. mts. However, considering the date of the notification under Section 4 of the Act, dated 7.4.88, the market value of the lands was required to be determined. The Land Acquisition Officer, by his award dated 16.10.90, awarded Rs. 6.30 per sq. mt. The claimants sought References and ultimately, the Reference Court in Land References considered the main case no. 793/93 and awarded the sum of Rs. 75.30 per sq. mt. to the claimants.

#. The second group of appeals covers First Appeal Nos. 401/99 to 416/99. The lands situated at village Jamiyatpura, Taluka and District - Gandhinagar were acquired for Narmada Main Canal. Notification under Section 4 of the Act was issued on 19.4.88 and the Special Land Acquisition Officer determined the market value of the lands at Rs. 6.30 per sq. mt. by his award dated 31.3.90. On reference, the Reference Court awarded of Rs. 75.30 per sq. mt. In the second group of matters, the Reference Court placed reliance on the award which is the subject matter of first group of appeals referred hereinabove, wherein notification under Section 4 of the Act was issued on 7.4.88.

#. The third group of matters covers First Appeals Nos. 1983/2000 to 1999/2000 wherein the land situated at Jamiyatpura, Taluka and District Gandhinagar were acquired for Narmada Main Canal. In these matters, notification under Section 4 of the Act was published on 16.5.88 and the Special Land Acquisition Officer by his award dated 16.10.90, offered the sum of Rs. 4.20 ps. and Rs. 6.30 ps. per sq. mt. considering the distance from the highway. Different amounts as aforesaid came to be awarded. However, on Reference, the Reference Court awarded the sum of Rs. 75.30 ps. per sq. mt. In this group of References, the Reference Court relied upon the decision rendered in Land Acquisition Reference Case No. 24/92, wherein notification under Section 4 of the Act

was published on 7.4.88 and the Reference Court awarded the sum of Rs. 75.30 ps. per sq. mt. which is the subject matter of the first group.

#. Thus, groups 2 and 3 are dependent on the first group.

##. For arriving at a conclusion as to what should be the market price, the Reference Court considered the oral as well as documentary evidence including the map and the documentary evidence namely, the awards made by the Reference Court for villages Adalaj and Khoraj, which were produced on the record vide exhs. 39, 41 and 44. It is required to be noted that reliance is also placed by the Reference Court on exhs. 47 and 50. So far as exh. 47 is concerned, that is the award in connection with the lands acquired under the notification published under Section 4 of the Act on 2.1.86 for the lands situated at village Adalaj. So far as exh. 50 is concerned, that is the award in connection with the lands situated at village Jaspur.

##. So far as the oral evidence is concerned, Suresh B. Patel has been examined by the claimants. He has pointed out before the Court the site of the land which is situated between the village Khoraj and village site of Jamiyatpura. He deposed that near the acquired lands, there is railway station known as Khodiyar Railway Station. He has pointed out in para 3 that the acquired lands are situated just near Gandhinagar-Sarkhej and Sarkhej-Mehsana National Highways. The lands were fertile and irrigated. The area is well developed. Nearabout the lands in question, there is Alok Cooperative Housing Society. There is evidence with regard to a tube well for irrigation. So far as the variety of crop is concerned, it is stated that thrice a year, cultivators were taking crop of paddy, millet (bajri) juwar, raido, wheat, rajko, castor etc.

##. About the exact location, this witness has pointed out that on the north of Jamiyatpura, there is Mehssana-Sabarmati Highway. On the south of Jamiyatpura, there is Khodiyar Railway Station. On the western side, there is road leading to IFFCO Township officers' colony and on the eastern side, there is Gandhinagar-Sarkhej Road near by the village. It is also in his evidence that the lands situated at village Khoraj and Adalaj are similar and equal in fertility. This witness has also stated that the lands are situated just near Ahmedabad and on the boundary of AUDA and therefore, price is very high.

##. With regard to market price, he has deposed that near the village Jamiyatpura, there is Adalaj overbridge at a distance of about 300 meters. The land of Chanduji Bakorji of village Adalaj were acquired for the construction of the bridge. Under the notification dated 2.1.86 published under Section 4 of the Act, the lands were acquired and the claimants were held entitled to get Rs. 75.00 per sq. mt. Copy of judgment delivered by the Reference Court is produced at Exh. 47. With a view to point out that the market price must be higher, he has pointed out in his evidence that new sectors of Gandhinagar are situated at a distance of about 3 kms. Khodiyar Railway Station is at a distance of about 1 km. The High Court Building is situated at a distance of about 4 kms. There is Nirma Institute which is situated at a distance of 3 kms. With a view to point out facilities, this witness has pointed out that in the village, school, post office, primary health centre, High School, road, light and such other facilities are available. Over and above this, nearby the village, there is railway station as well as the village has facilities and on all sides, there are tar roads including Highway. It is further pointed out that there are Dairy, Container Depot, IFFCO, Printing Press etc. He has also pointed out that the land of one Ghanshyambhai Ishwarbhai was acquired under the notification under Section 4 of the Act published on 1.5.88 and he was awarded Rs. 80/- per sq. mt. For sale instances, he has pointed out in para 7 of his evidence that Avjibhai Lilaji Thakor and Shakariben Somaji whose lands have been seen by the deponent were sold at the rate of Rs. 80/- per sq. mt. He has further pointed out that at a distance of one and a half kilometer, there is village Gyaspur. The lands situated at village Gyaspur were acquired for Narmada Project for which Land Acquisition Case No. 750/90 came to be filed in the court of Extra Assistant Judge, Mehsana and the Reference Court awarded Rs. 72/- per sq. mt. Copy of the said judgment is produced vide exh. 50. This witness has pointed out that notification under Section 4 of the Act in this case was published on 2.6.86. Mr. A.J. Patel, learned counsel appearing for the claimants submitted that the award of the Reference Court in connection with the lands acquired at village Gyaspur has not only been confirmed by Division Bench of this Court, but the Special Leave Petition of the State has also been dismissed by the Apex Court. Mr. Arun D.Oza, learned Government Pleader could not deny this statement.

##. The sim of village Jamiyatpura and Khoraj are

adjoining to each other. Witness Kanubhai Naranbhai Patel has stated that Jamiyatpura is a suburb of village Adalaj. This witness in his evidence in detail has pointed out about the expenditure incurred for tube well, submersible pump etc. which is not required to be considered. In the cross-examination, so far as the lands situated at village Adalaj and Gyaspur are concerned, nothing particular has been put to this witness but general questions have been put to him.

##. One Vinod Shantilal Shah, Executive Engineer has been examined on behalf of the State. He has admitted that for the tubewell, valuation has not been determined as per the market rate, but as per their norms, amount has been determined. He has admitted that villages Adalaj and Jamiyatpura are adjoining to each other. He has also stated that Jamiyatpura has no railway facility. He has also stated that from Jamiyatpura, one can go to Dantali and Gyaspur villages.

##. Land Acquisition Officer, Shri C.R.Sanghada was examined by the State. He has denied the suggestion that he has not taken into consideration the development or the potentiality. He has shown his ignorance about passing of the Narmada Canal through Jamiyatpura immediately after leaving the village boundary of Adalaj. About Sarkhej-Gandhinagar Highway and other roads as also Ahmedabad-Mehsana Highway and the situation of the village, he has shown his ignorance. He has admitted that the awards were made with regard to the lands situated at Adalaj, Jamiyatpura and Gandhinagar etc.

##. Mr. A.J. Patel, learned counsel appearing for the claimants submitted that the village Adalaj and Jamiyatpura are adjoining villages and considering the sites of these villages and the lands, the claimants could have claimed more amount. He has submitted that the potentiality has not been taken into consideration in proper perspective. Considering the fact that Jamiyatpura is nearby the railway station and surrounding the village, roads are constructed, which are not merely tar roads, but are highways, the price is to be determined. Mr. Patel further submitted that IFFCO which is the biggest plant in Asia is also situated nearby the village. We are not required to take into consideration this aspect because before the Reference Court, no submissions were made in this behalf and the Reference Court was called upon to determine the market price on the basis of the market value arrived at for the acquired lands having similar fertility and situated in the adjoining village.

##. Mr. Patel, learned counsel for the claimants drew our attention to the decision of the Apex Court in the case of Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another [2001 AIR SCW 2417]. In that case, appeals were preferred before the Apex Court by the claimants who were aggrieved as the appeals preferred by the State were partly allowed and the amount of compensation was reduced by Rs. 10/- per sq. mt. from the rate of compensation determined at Rs. 58/- by the Reference Court by its judgment and award dated 14th October, 1998. It was pointed out that the lands sought to be acquired were within 2 kilometers from the town of Viramgam. Further the land under acquisition and the land under exh. 16 are situated at an equal distance from the said Viramgam town. The acquisition of land covered vide exh. 16 was under a notification under Section 4 of the Act, dated 3rd January, 1991 while acquisition in the case before the Court was covered under a notification under Section 4 of the Act dated 1st August, 1991. The rate of land under Exh. 16 which became final is Rs. 64/- per sq. mt. The Reference Court, after considering Exh. 16 and taking into consideration the evidence, fixed the rate of compensation at Rs. 58/- per sq. mt. It was suggested before the Apex Court that the land acquired under exh. 16 cannot be taken into consideration in view of the distance which was of 5 kilometers from the present acquired lands and was for a small piece of land i.e. 2 hectares approximately. In para 12 of the judgment, it was pointed out as under.

"The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and exh. 16 is about 5 kilometers. With reference to question of acquisition being of larger area, the error is, when we scan, we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holder's land is clubbed together then the area becomes large. Each landowner's holdings are of small area. Even otherwise visioning in the line with submission for the State, we find exh. 16 is about two hectares of land which cannot be said to be of small piece of land. So far as the other question of distance between the two classes of lands, that by itself cannot be derogate the claim of the claimant unless there are some such

other materials to show that quality and potentiality of such land is inferior. However, distance between the land under exh. 16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under exh. 16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between exh. 16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq. mtr. cannot be sustained."

Mr. Patel, learned counsel for the claimants submitted that if the map is perused, it is clear that there is no distance between the two villages as the borders of both the villages are common. One is village Adalaj and other is Jamiyaputra village. If the map of village Jamiyatpura is seen, it becomes clear that there is a common boundary. Narmada Main Canal passes through Adalaj as well as Jamiyatpura. Considering the fact that the fertility and potentiality of the lands being the similar and the cultivator cultivating the lands having knowledge about the nature and fertility of lands, had deposed to that effect, it is difficult to accept the submission made on behalf of the State that no reliance can be placed on the award for the lands situated at village Adalaj.

##. So far as the lands situated at village Adalaj are concerned, Mr. Patel drew our attention to exh. 47, copy of award made by the Reference Court for acquisition of lands situated at Adalaj under the notification which was published under Section 4 of the Act on 2.1.86 and in the said award, the Reference Court awarded the sum of Rs. 75/- per sq. mt. Mr. Patel. Learned counsel appearing for the claimants submitted that the lands situated at village Adalaj were acquired under the notification published on 21.12.89 under Section 4 of the Act, for which Land Acquisition Reference No. 22/93 was preferred and the Reference Court awarded Rs. 85/- per sq. mt. The Division Bench (Coram: M.R. Calla & D.H.

Waghela, JJ), on 4.5.2000, confirmed the aforesaid award in First Appeal Nos. 4497/99 with First Appeal Nos. 7289/99 to 7299/99. Mr. Patel further submitted that the notification under Section 4 of the Act was published on 1.8.91 for acquiring the land situated at village Adalaj, for which Land Acquisition Reference No. 1346/93 was filed and the Reference Court awarded Rs. 120/- per sq. mt. for agricultural land and Rs. 270/- for non-agricultural lands. The said award has been confirmed by the Division Bench of this Court (Coram: J.N. Bhatt & Akshay H. Mehta, JJ) on 17.7.2001 in First Appeal Nos. 1471 to 1492/01. The lands situated at village Adalaj were also acquired under another notification published under Section 4 of the Act on 13.12.85 and the Reference Court in Land Acquisition Reference No. 358/91 awarded Rs. 69/- per sq. mt. for agricultural lands. The said award has been confirmed by the Division Bench of this Court (Coram: J.N. Bhatt & Akshay H. Mehta, JJ) on 17.7.2001 in First Appeal Nos. 2035/01 to 2087/01. The lands situated at village Adalaj were acquired by another notification published on 13.12.84 under Section 4 of the Act. The Reference Court in Land Acquisition Reference No. 213/99 awarded Rs. 69/- per sq. mt. for agricultural land. The Division Bench of this Court on 27.8.2001 confirmed the said award in First Appeal Nos. 5193/2000 to 5234/2000. The lands at village Adalaj were acquired for which notification under Section 4 of the Act was published on 29.1.88. The Reference Court in Land Acquisition Reference No. 32/93 awarded Rs. 85/per sq. mt. for agricultural lands. The Division Bench in First Appeal Nos. 5139/2000 to 5161/2000 on 27.8.2001 confirmed the aforesaid award. Mr. Patel learned counsel, therefore submitted that in view of the fact that both the villages are nearby and are lands of similar nature and fertility, in absence of any evidence led by the State indicating that there is difference between the quality including the potentiality of the lands of these two villages or the lands acquired are less fertile than the lands of Adalaj there is no earthly reason as to why the present claimants be denied the benefits of the award for lands of Adalaj made by the Reference Court which is confirmed by the High Court.

##. We have discussed earlier about the lands acquired of village Gyaspur and the fact that the Reference Court (Assistant Judge, Mehsana) awarded higher amount. This village Gyaspur is also situated nearby village Adalaj. The Division Bench, hearing the appeals in respect of the lands situated in this village, confirmed the award made by the Reference Court and the Special Leave Petition has been rejected. It is in this background, it was urged

that there is no reason to interfere with the award made by the Reference Court.

##. On behalf of the State, Mr. Arun D. Oza, learned Government Pleader submitted that before the Reference Court, evidence was produced vide exh. 41, pointing out that the lands of village Khoraj were acquired under the provisions of the Act under notification issued under Section 4 of the Act on 4.1.81 and in the Land Acquisition Reference No. 2/83, the Reference Court awarded Rs. 35/- per sq. mt. He further submitted that the award in the aforesaid Reference has been confirmed by this High Court in First Appeal Nos. 1142/84 to 1144/84. Mr. Oza submitted that the amount to be awarded could be in the vicinity of Rs. 60/- and not more than that. It is required to be noted that the land situated at village Khoraj were also acquired subsequently for which notification under Section 4 of the Act was published on 1.8.91 and in Land Acquisition Reference No. 71/99, the Reference Court awarded Rs. 93/- per sq. mt. What is required to be noted is that the price is to be determined considering the fact that the lands are situated nearby the city like Ahmedabad and when there is increasing demand of land, prices are bound to increase which can be seen from various awards produced before us.

##. It is a matter of general knowledge that the purchasing power of currency is decreasing. On account of migration of people from villages to cities and on account of increasing population in cities, there is fast development of surrounding areas. Even Development Authorities are required to cover villages for providing residential and other needs of public. These and other factors i.e. investment in lands, have contributed a lot in price rise. These factors can not be forgotten while determining the market price of land. Land/earth cannot be expanded. Land is not a commodity that can be generated. Human beings have tried to reclaim but at what cost that is done is to be remembered.

##. For the purpose of determining the market value, the Reference Court has to take into consideration Section 23 of the Act and is required to award the amount of compensation. The potentiality is a true element of market value. The evidence placed on record cannot be ignored and the lands situated nearby the village if acquired, will give idea as to what could be the market price of the land. If it is the case of acquisition of land in a city, the matter is required to be considered in a different manner all together. In the thickly

populated area, where the land is in a corner or the land abuts on on road or the land having nearby markets will obviously be valued at a higher price then the land situated in the interior part having no other facilities. So far as the agricultural lands are concerned, the fertility of the land is required to be taken into consideration. In a given case, though the land is an agricultural land, but is sandwiched between developed plots or lands, or agricultural lands are on the outskirts of a city or town or are situated nearby developed areas different consideration may apply. Potentiality must be kept in mind while determining the market price. In our opinion, considering all these aspects, it is not possible to interfere with the award made in the First Appeal No. 7252/99 to 7267/99.

##. The two other groups of appeals are filed against the award made by the Reference Court for which notifications were issued in the months of April and May, 1988 and the Reference Court has taken into consideration the decision rendered in Land Acquisition Reference No. 24/92 which is the subject matter of First Appeal Nos. 7252/99 to 7267/99.

##. In view of what we have stated hereinabove, the award made in respect of the lands situated at village Jamiyatpura in Land Acquisition Reference No. 24/92 i.e. in First Appeal Nos. 7252/99 to 7267/99 will have to be considered in First Appeal Nos. 401/93 to 416/93 and First Appeal Nos. 1983/00 to 1999/00. In view of what is stated hereinabove, it is not possible for us to interfere with the awards made by the Reference Court in the above appeals.

##. The entire record has been made available by the learned advocates for the parties. It goes without saying that in all these appeals the benefit of price determined shall be given to the claimants with all statutory benefits as admissible under the law including interest and solatium. Mr. Patel submitted that it is necessary to direct that the claimants must be paid the amount of solatium with interest. He invited our attention to the judgment of the the Apex Court in the case of SUNDER vs. UNION OF INDIA in Civil Appeal No. 7261/98 decided on 19th September, 2001, wherein the Apex Court has held as under.

"27. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati

& Ors. (supra)

`Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

28. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

##. The appeals filed by the State are accordingly dismissed. Civil Applications for stay stand rejected. Notice discharged.

##. Mr. Patel submitted that the lands were acquired in 1988 and the claimants are not getting the fruits of the award. He therefore, submitted that the State must be directed to pay the amount under the awards within a reasonable period. Under the circumstances, we direct that 50% amount of the award shall be paid to the claimants within three months after proper verification and the remaining 50% amount of compensation shall be paid within three months thereafter.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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